

Hon. Richard A. Jones  
Hon. Brian A. Tsuchida

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KELVIN KIRKPATRICK, an individual,

Plaintiff,

v.

STEVEN AZEVEDO, an individual,

Defendant.

No. 2:19-cv-01566-RAJ-BAT

PLAINTIFF KELVIN KIRKPATRICK'S  
REPLY AND AFFIRMATIVE DEFENSE  
TO DEFENDANT STEVEN AZEVEDO'S  
COUNTERCLAIM

Plaintiff Kelvin Kirkpatrick hereby makes the following Reply and Affirmative Defenses to the Counterclaim of Defendant Steven Azevedo (Dkt. 11 at 8-14):

**I. REPLY**

1. Paragraph 1 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Kirkpatrick does not dispute that this Court has personal jurisdiction.

2. Paragraph 2 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Kirkpatrick denies that this Court has supplemental jurisdiction over Deputy Azevedo's Counterclaim.

3. Paragraph 3 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Kirkpatrick does not dispute that venue in this Court is proper.

4. Mr. Kirkpatrick admits the allegations in paragraph 4.

PLAINTIFF KELVIN KIRKPATRICK'S REPLY AND AFFIRMATIVE  
DEFENSE TO DEFENDANT STEVEN AZEVEDO'S  
COUNTERCLAIM - 1

No. 2:19-cv-01566-RAJ-BAT  
11870.00'mk260101

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Seattle, Washington 98104  
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1           5.       Paragraph 5 states a legal conclusion to which no response is required. To the  
2 extent a response is required, Mr. Kirkpatrick does not dispute the allegation.

3           6.       Mr. Kirkpatrick admits that he was required to use his Metro Transit employee  
4 badge to ride the light rail while on duty. Mr. Kirkpatrick denies the remainder of the allegations  
5 in paragraph 6.

6           7.       Mr. Kirkpatrick admits the allegations in paragraph 7. Mr. Kirkpatrick states that  
7 upon discovering that the ORCA chip in his badge was defective, he notified his supervisors at  
8 Metro Transit. Further, his supervisors instructed him to continue tapping his defective badge  
9 when entering and exiting the light rail while on duty.

10          8.       Mr. Kirkpatrick denies the allegations in paragraph 8.

11          9.       Mr. Kirkpatrick denies the allegations in paragraph 9.

12          10.      Mr. Kirkpatrick denies the allegations in paragraph 10.

13          11.      Mr. Kirkpatrick denies the allegations in paragraph 11. Mr. Kirkpatrick tapped his  
14 defective employee badge when entering the light rail station on April 15, 2019, as instructed by  
15 his supervisors.

16          12.      Paragraph 12 states a legal conclusion to which no response is required. To the  
17 extent a response is required, Mr. Kirkpatrick denies the allegations.

18          13.      Mr. Kirkpatrick admits the allegations in the first sentence and denies the  
19 allegations in the second sentence of paragraph 13.

20          14.      Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 14, and  
21 otherwise denies the same.

22          15.      Mr. Kirkpatrick admits that he removed his employee badge from its sleeve and  
23 informed FEO Lindley that his employee badge was defective and his supervisors instructed him  
24 to continue tapping the badge while waiting for a replacement. Mr. Kirkpatrick denies the  
25 remainder of the allegations in paragraph 15.

26          16.      Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 16, and  
27 otherwise denies same.

1           17. Mr. Kirkpatrick denies the allegations in the first sentence and admits the  
2 allegations in the second sentence of paragraph 17.

3           18. The allegation in the first sentence of paragraph 18 states a legal conclusion to  
4 which no response is required. Mr. Kirkpatrick admits the allegations in the second sentence.

5           19. Mr. Kirkpatrick admits the allegation in paragraph 19.

6           20. Mr. Kirkpatrick states that in response to FEO Lindley's demand, he replied that  
7 his employee badge was sufficient and reiterated that he was following his supervisors'  
8 instructions, to continue using his badge. Mr. Kirkpatrick denies the remainder of the allegations  
9 in paragraph 20.

10          21. Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 21, and  
11 otherwise denies the same.

12          22. Mr. Kirkpatrick denies the allegations in paragraph 22. Mr. Kirkpatrick explained  
13 to FEO Lindley that his employee badge was sufficient identification.

14          23. Mr. Kirkpatrick denies the allegations in paragraph 23.

15          24. Mr. Kirkpatrick admits that he told FEO Lindley that he could not get off the train  
16 before Stadium Station because he was on duty and needed to report to Metro Transit's Central  
17 Base to begin his next route. Mr. Kirkpatrick denies the remainder of the allegations in paragraph  
18 24.

19          25. Mr. Kirkpatrick denies the allegations in paragraph 25.

20          26. Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 26, and  
21 otherwise denies the same.

22          27. Mr. Kirkpatrick denies the allegations in paragraph 27.

23          28. Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 28, and  
24 otherwise denies the same.

25          29. Mr. Kirkpatrick admits that he got out of the train at Stadium Station, but  
26 otherwise denies the allegations in paragraph 29.

27          30. Mr. Kirkpatrick denies the allegations in paragraph 30.

1           31. Mr. Kirkpatrick admits he saw the King County Sheriff's deputies walking down  
2 the platform in the opposite direction, but otherwise denies the allegations in paragraph 31.

3           32. Paragraph 32 states a legal conclusion to which no response is required. To the  
4 extent a response is required, Mr. Kirkpatrick denies the allegations.

5           33. Mr. Kirkpatrick denies the allegations in paragraph 33.

6           34. Mr. Kirkpatrick denies the allegations in paragraph 34.

7           35. Mr. Kirkpatrick admits that he continued to walk down the platform towards  
8 Metro Transit Central Base to begin his next route, but otherwise denies the allegations in  
9 paragraph 35.

10          36. Mr. Kirkpatrick admits he continued to walk down the platform towards Metro  
11 Transit Central Base to begin his next shift, but otherwise denies the allegations in paragraph 36.

12          37. Mr. Kirkpatrick denies the allegations in paragraph 37.

13          38. Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 38, and  
14 otherwise denies the same.

15          39. Mr. Kirkpatrick lacks knowledge of the allegations in paragraph 39, and  
16 otherwise denies the same.

17          40. Mr. Kirkpatrick denies the allegations in paragraph 40.

18          41. Mr. Kirkpatrick denies the allegations in paragraph 41.

19          42. Mr. Kirkpatrick lacks knowledge of Deputy Azevedo's purpose, but otherwise  
20 admits the allegations in paragraph 42.

21          43. Mr. Kirkpatrick lacks knowledge of Deputy Azevedo's purpose, but otherwise  
22 admits the allegations in paragraph 43.

23          44. Mr. Kirkpatrick denies the allegations in paragraph 44.

24          45. Mr. Kirkpatrick admits that he was given a citation. Mr. Kirkpatrick lacks  
25 knowledge of the remainder of the allegations in paragraph 45, and otherwise denies the same.

26          46. Mr. Kirkpatrick denies the allegations in paragraph 46.

48. Mr. Kirkpatrick denies the allegations in paragraph 48 and Deputy Azevedo's Counterclaim brought pursuant to RCW 4.24.350.

48. Mr. Kirkpatrick denies the allegations in paragraph 48 and Deputy Azevedo's Counterclaim brought pursuant to RCW 4.24.350.

## II. AFFIRMATIVE DEFENSES

1. Defendant Azevedo's Counterclaim under 4.24.350 fails to state a claim upon which relief can be granted.

2. Mr. Kirkpatrick's Complaint in this action constitutes a complaint to a governmental agency as defined by RCW 4.24.510. Mr. Kirkpatrick is absolutely immune from Defendant Azevedo's state-law-based Counterclaim under RCW 4.24.510.

3. RCW 4.24.350 is preempted by federal law. Federal law governs the assessment of costs, fees, and damages in civil rights actions brought under 42 U.S.C. § 1983. *See* 42 U.S.C. § 1988. The state law provisions that are the basis for Defendant Azevedo’s Counterclaim under RCW 4.24.350(2) permits costs, fees, and damages to be assessed against civil rights plaintiffs on grounds, and to an extent, that exceed the terms and limits provided by federal law.

4. Mr. Kirkpatrick's Complaint in this action constitutes a petition to this Court for redress of grievances. Mr. Kirkpatrick is absolutely immune from Defendant Azevedo's Counterclaim under the Noerr-Pennington doctrine.

5. Mr. Kirkpatrick's Complaint is an exercise of his right to freely access this Court. Mr. Kirkpatrick is absolutely immune from Defendant Azevedo's Counterclaim under the common law litigation privilege.

### III. PRAYER FOR RELIEF

1. This Court should declare that RCW 4.24.350(2) is preempted by federal law, as applied to federal civil rights claims brought under 42 U.S.C. 1983.

2. Defendant Azevedo's Counterclaim brought under RCW 4.24.350 should be dismissed with prejudice.

3. Mr. Kirkpatrick should be awarded the reasonable costs and attorney's fees he has

1 incurred in defending against this Counterclaim, and statutory damages in the amount of \$10,000  
2 under RCW 4.24.510.

3 4. Mr. Kirkpatrick should be afforded such other relief as the Court deems just and  
4 equitable.

5  
6 DATED this 9<sup>th</sup> day of December, 2019.

7  
8 MacDONALD HOAGUE & BAYLESS

9  
10 By: /s/Joe Shaeffer  
11 Joe Shaeffer, WSBA #33273  
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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the United States that on the 9<sup>th</sup> day of December, 2019, I electronically filed the foregoing **Plaintiff Kelvin Kirkpatrick's Reply and Affirmative Defense to Defendant Steven Azevedo's Counterclaim** using the Court's ECF system which will send notice of such filing to:

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/s/Joe Shaeffer

Joe Shaeffer